

No. D-4549

Translation of the attached article in
China Times of February 18, 1933.

File 213133

The Law of our Country to be applied
in Litigations between Chinese & Americans.

Linpak telegraphs a notification by the Cabinet
of the United States of America.

Nanking, Feb. 17:- According to a telegram sent by
Linpak, American adviser to the National Government,
from America to Messrs Yu Yu-chen, Tai Shuan-yen & Loo
Wan-kan, the American Cabinet has passed at a meeting
Senator "Daily's" proposal that in future Chinese law
is to be applied in all the United States Courts for
China in litigations in which Chinese are concerned.



FILE

[Handwritten signature] 1/3/33

Transcription from China Times 19.2.35.

CHINESE LAW TO BE USED IN SINO-AMERICAN CASES.

Despite several years of endeavour, the abolition of consular jurisdiction is still far from realization. Since the September 18 Incident, our international position has become weaker than ever, and we feel that we are not even entitled to talk about this question. Recently, an American named Linebarger sent a telegram from America to the National Government reporting that the American State Department has passed "Tak Lai's" proposal that hereafter the American Court in China will use Chinese law in cases involving Chinese and Americans.

Although this step is still a far-cry from the abolition of consular jurisdiction, yet it is a fine gesture of respect for Chinese law from a friendly nation.

People living in a foreign country must be subject to the law of that country, otherwise the situation would create great inconvenience between the peoples of the two countries and would be a violation of the sovereignty of the country. The adoption of Chinese law by the American Court in China indicates the high progress of jurisprudence in America. There is a great difference between the Chinese and the American Substantive Law(?) and the Code of Criminal Procedure. We would like to know whether the American Court will adopt both these laws or only the former. If the Chinese Criminal Procedure is also adopted, then the very organization of the Court itself would be affected. The American Government evidently desired to give more attention to Chinese law when it invoked a part of the Substantive Law in the hearing of cases involving Chinese and Americans. The original system of the Court will remain unchanged.

The action of the American Government constitutes the first step toward the abolition of consular jurisdiction in China and sets an example to the other Powers.

February 20, 1933

Afternoon Translation

MISCELLANEOUS

China Times publishes the following comment:-

THE ADMINISTRATIVE EXPENSES OF THE GAOIS

The Chinese Government is preoccupied with grave international questions and has no time to deal with minor matters like the abolition of the Court Rendition Agreement. Although the agreement has been extended for three years, yet a solution of the question should be found, because several points in the agreement are contrary to the judiciary system of China.

It is being rumoured that, following upon a conference with the various parties concerned, the gaois in the Settlement will be transferred to the control of the Court. This would be in conformity of the present judicial system of the country. But the maintenance costs of the gaois in the Settlement amount to over a million taels a year. If the gaois are restored to China, which body will pay such a large sum for maintenance costs? The Court cannot pay because its income is limited. It is unfair to ask the Central or the Provincial Government to defray this local expenditure.

In our opinion, as the gaois are closely related to the peace and safety of the district, the expenditure should be borne by the administrative organ of the Settlement. The S.P.C. realizes the importance of gaois, and must not shift the responsibility for the expenditure of the maintenance under the pretext that the control of the gaois had passed out of its hands.

A FRIENDLY AMERICAN GESTURE: USE OF CHINESE LAW IN U.S. COURTS

The day for the abolition of consular jurisdiction is still far away. After the September 18 Incident, China's international position has become weaker than ever. It will be ridiculous for us to talk about abolition of extrajurisdiction at present.

However, the American Government in a telegram to the Chinese Government, states that the American Congress has passed a resolution that henceforth, the American consular courts in China will use Chinese law in all cases involving Chinese and Americans. This is a friendly gesture of respect for Chinese law.

The use of foreign law in a country not only causes great inconvenience but is contrary to the sovereignty of the country. The American proposal is a preliminary step towards the abolition of consular jurisdiction. It is hoped that all other countries will follow her example.

PAUL LINEBARGER
LEGAL ADVISOR
NATIONAL GOVERNMENT OF CHINA, HANKING, CHINA
2006 R STREET N. W. WASHINGTON, D.C.
TEL. WHITE POTOMAC 3464 CABLE ADDRESS "LINEBARGER"

January 12, 1933

Dear Mr. Editor:

I have pleasure in enclosing a copy of
Congressional Bill : H.R. 14083, which, although I only
had introduced through the courtesy of Congressman on the
sixth instant, I have had in abeyance for years.

As the author of this bill, I should like
to get as many authoritative opinions as possible, so
that I may change it, in the event anything better is
proposed.

In such behalf I hope that you will give
editorial attention to this (from my humble opinion)
very important bill, so that the public becoming interested
some advance in constructive criticism may be made.

It seems to me that this is a good chance for
Chinese and foreigners to get together and co-operate.

What do you think about this bill, Mr. Editor ?

With kindest regards,

Very faithfully yours

(Sgd.) PAUL LINEBARGER
Paul Linebarger

Sup. H. C. : Here with
introduced in Congress
Chinese Law in American hands



D.L. (Line)
Information

Enclosure 2

Handwritten initials and date: 2/27

IN THE HOUSE OF REPRESENTATIVES

January 6, 1933

Mr. Dyer introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed

A B I L L

To amend the organic law of the United States Court for China enacted June 30, 1906.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 197 of the Act of June 30, 1906, governing the United States Court for China is hereby amended by adding thereto the following:

"Any party to any civil action in the United States Court for China shall have the right to demand that such action be determined in accordance with the laws of the Chinese Republic, provided that a petition for such right be filed, and that such action be in conformance with the following procedure to be followed:

"Within five days after summons is served in any civil action the party desirous of the right to have his, her, or its action determined according to Chinese law, shall file in lieu of an answer to previous pleading (in the event that there has been such pleading) a succinct and clear bill of particulars, which shall set forth in an orderly, chronological statement by progressive paragraphs all the facts at issue between all the parties to such action, and the said statement shall conclude by making a categorical demand upon the opposing party or parties for an answer upon such questions as may arise up the full subject of the controversy, and shall likewise demand that the opposing party or parties shall conciliate and arbitrate the action according to an offer made by the party first filing the said bill of particulars.

"Within five days after the filing of the said bill of particulars the opposing party or parties shall likewise file an answering bill of particulars, answering the bill of particulars first filed, and concluding with an acceptance or rejection of the offer of settlement and conciliation made in the said first bill of particulars.

"The judge of the United States Court for China within five days the answering bill of particulars has been filed shall summon all the parties to appear in open court, to determine, if it be possible, to conciliate the issue, by the agreement of the parties. If the case is thus conciliated, the court costs shall be assessed equally by the judge, between or among the said parties, and the agreement of conciliation shall be spread upon the court records. In the event that the parties will not agree to conciliate the issues, then the judge shall cause the parties to prepare under his direction in open court, an agreed statement of fact, and upon this agreed statement of fact, questions of issue shall be likewise prepared and the trial of the case will proceed upon such questions of issue.

"The method of the trial on the said questions of issue shall be as informal and expeditious as the dignity and decorum of the court will permit. The witnesses need not be sworn, but shall be admonished to tell the truth, and shall be instructed that any false testimony shall make them amenable to the criminal and civil laws in such behalf, and that the fact of their testifying as a witness of itself is an acceptance of the penalties of the law. Rules of evidence shall be liberalized, so that the complete testimony of the witnesses shall not be broken up into fragments but shall make a continuous and connected narration, and the Chinese legal practice of allowing a witness to tell his story, uninterrupted (except by admonishments of the person acting as judge) by a discussion of the rules of evidence, shall prevail. If the witness so request, he shall be allowed to present as the basis of his testimony an affidavit previously prepared, and upon which the judge may make further examination of the witness in open court.

"The parties will not be compelled to file their actions or prepare pleadings through counsel, unless the judge may conclude that the bills of particulars are not intelligible, in which event he may himself clarify the statements or direct the referee hereafter mentioned to amend, make clear, or otherwise change any part of the said bill of particulars which may appear ambiguous.

"In the event that the judge for the United States Court for China is not versed in Chinese law and language he shall appoint a citizen of China, qualified in both the Chinese and the American laws and languages, to act as translator, interpreter, and referee. As translator, such Chinese citizen shall translate the bills of particulars and all other papers filed, both contentious and conciliatory; as interpreter, he shall attend the judge and interpret the testimony of the witnesses; as a referee he shall perform all those functions of investigating facts and proofs and reporting findings which the judge shall deem necessary to pass judgment on the issues.

"And as the said judge shall direct, the referee shall be allowed fees to be taxed by the judge in his discretion against the parties in each case, according to the labor and time expended, and the amount involved in litigation or conciliation:

Provided, That in cases filed in forma pauperis, the judge in his discretion may order the payment of the fees of the said translator, interpreter, and referee from the funds of the United States Court for China.

"If no conciliation has been effected, upon the conclusion of the hearing the judge shall immediately give his decision in part or in whole. If in part, then he shall admonish the parties of certain questions which still leave his mind in doubt, and he shall instruct the parties to put forth additional efforts to conciliate the issues. He shall then set another day for hearing within the ensuing five days, at which time he shall enter his full judgment in an opinion made by him in writing.

"Within five days after such judgment has been rendered any party may appeal to the American Court in the United States of America against the judgment of the said judge of the United States Court for China, but the said judge shall exact from the appellant a bond of not less, in any case, of \$2,000 gold United States currency, to guarantee the payment of counsel and other fees, expenses, and outlays in such American appellate court."

PHONE 12048
12049

MEMORANDUM

SHANGHAI MUNICIPAL POLICE
& S. B. REGISTRY

FROM THE MUNICIPAL ADVOCATE'S OFFICE,
SHANGHAI MUNICIPAL COUNCIL.

To Superintendent Yonke

Present

Shanghai, Feb. 23, 1933.

In re Application of Chinese Law
in American Courts

With reference to the above entitled matter, I beg to state that I have made inquiries from officials of the United States Court for China. It appears that a bill has been introduced in the House of Representatives by Congressman Dyer from Missouri providing in effect that Chinese law shall be applied in the United States Court for China. I am endeavoring to get a copy of the bill, and if I am successful, I will let you have a copy.

Mr. Dyer is a Republican who was not reelected in the last general election, and it is not likely that his bill will be passed by the present House of Representatives which has a Democratic majority.

Both the British and American treaties providing for extrajurisdictionality expire soon, and it is altogether within the realm of possibility that new treaties may be negotiated on the basis of which Chinese laws shall be applied in both the British and American Courts. Up to the present time, however, as far as

I

Supt. Gilbert
Information

D.C. (Am.)

Chapman

Yonke

C.P.

RECEIVED
FEB 23 1933
CRIME & M. CASE
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MEMORANDUM

FROM THE MUNICIPAL ADVOCATE'S OFFICE,
SHANGHAI MUNICIPAL COUNCIL.

To.....

Shanghai,..... 193 .

-2-

I know, no definite action has been taken by either the
British or American Governments.

R. T. Bryan, Jr.
Municipal Advocate.

February 20, 1933

Afternoon Translation

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It is being rumored that, following upon a conference with the various parties concerned, the gails in the Settlement will be transferred to the control of the Court. This would be in conformity of the present judicial system of the country. But the maintenance costs of the gails in the Settlement amount to over a million taels a year. If the gails are restored to China, which body will pay such a large sum for maintenance costs? The Court cannot pay because its income is limited. It is unfair to ask the Central or the Provincial Government to defray this local expenditure.

In our opinion, as the gails are closely related to the peace and safety of the district, the expenditure should be borne by the administrative organ of the Settlement. The S.C.C. realizes the importance of gails, and must not shift the responsibility for the expenditure of the maintenance under the pretext that the control of the gails had passed out of its hands.

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However, the American Government in a telegram to the Chinese Government, states that the American Congress has passed a resolution that henceforth, the American consular courts in China will use Chinese law in all cases involving Chinese and Americans. This is a friendly gesture of respect for Chinese law.

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